United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLANT

76-7310

IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

B

P/S

DONNA LYNCH, et al
Plaintiff—Appellee

RUTHANN BIGELOW, GAIL HUNTLEY and LELAND YOUNG,
Intervening Plaintiffs

v.

PAUL PHILBROOK, Commissioner of the Vermont Department of Social Welfare
Defendant—Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT

Civil Action No. 75 - 37

BRIEF OF DEFENDANT — APPELLANT

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I. STATEMENT OF THE ISSUES

A. Should the action be dismissed because the constitutional claim that Vermont's Emergency Assistance Program denies plaintiffs of the equal protection of the laws is insubstantial.

B. Should the action be dismissed with regard to intervening plaintiffs Huntley and Bigelow since their complaints fail to state a claim upon which relief can be granted.

C. Should defendant's motion for summary judgment be granted since Vermont's Emergency Assistance Program conforms to federal requirements.

II. STATEMENT OF THE CASE

A. Nature of the Case, Course of Proceedings, and Disposition Below.

This is a civil rights action filed pursuant to the provisions of 42 U.S.C. §1983 with jurisdiction based on 28 U.S.C. §1343(3). The complaint filed on behalf of Donna Lynch was filed on February 7, 1975. The plaintiff sought declaratory and injunctive relief on the basis of the following claims: 1) the defendant's ANFC-EA regulations are inconsistent with federal law and therefore violate the Supremacy Clause of

the United States Constitution; and 2) the defendant's ANFC-EA regulations are violative of plaintiff's rights to equal protection and due process.

On February 11, 1975, Judge Coffrin issued a temporary restraining order pursuant to Donna Lynch's application.

On March 21, 1975, Plaintiff-Intervenor Bigelow filed a motion to intervene in this matter and that motion was granted on July 7, 1975.

Plaintiffs Lynch and Bigelow, on March 25, 1975, moved the Court for a class action determination.

Plaintiff Huntley filed a motion to intervene and an application for a temporary restraining order on April 8, 1975. On April 14, 1975, the Court granted the motion to intervene and on the following day, issued a restraining order.

Plaintiff Young moved to intervene and applied for a temporary restraining order on October 14, 1975. The Court granted the motion to intervene on October 20, 1975, but on October 29, 1975, denied Mr. Young's request for a temporary restraining order.

The Court's Opinion and Order were issued on June 2, 1976. The Court found that federal jurisdiction was properly based but denied the plaintiffs' motion to maintain the suit as a class action. The Court made no determination of defendant's motion to dismiss the complaints of plaintiffs

Huntley and Bigelow. However, the Court declared Vermont's emergency assistance (ANFC-EA) regulations to be invalid under the Supremacy Clause of the United States Constitution and enjoined their enforcement and implementation.

The defendant's notice of appeal was filed on June 14, 1976. On that same day, the defendant filed a motion for a stay of the Court's order pending an appeal. The Court granted defendant's motion for a stay on June 22, 1976.

B. The Facts

1. Introduction

The facts of this case are not in dispute. On September 24, 1975, the parties to the action filed a stipulation of agreed facts. This stipulation is found in the Joint Appendix at 33.

The case is concerned with Vermont's Emergency Assistance program (ANFC-EA). This program is an optional component of the joint federal-state welfare program of Aid to Needy Families with Children (ANFC)[1]. It was adopted under Vermont statutes, 33 V.S.A. §270 et seq. and the federal Social Security Act, 42 U.S.C. §601 et seq.

ANFC-EA is created and defined by 42 U.S.C. §606(e). It was designed to meet emergency needs of families with

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[1]On the federal level the program is called Aid to Families with Dependent Children (AFDC).

children. 42 U.S.C. §603(a)(5) provides for 50% federal funding of ANFC-EA when a state chooses to participate. The federal regulations concerning ANFC-EA are found at 45 C.F.R. §233.120. (Appendix at 53).

In accordance with 45 C.F.R. §233.120(a)(1), Vermont has submitted to the federal Department of Health, Education and Welfare its state plan setting out the eligibility criteria for emergency assistance. (The State Plan is included in the Appendix at 51). The plan, which was approved by H.E.W., provides that the eligibility conditions and methods of furnishing assistance are those specified in Sections 2600 - 2603 of the Vermont Welfare Assistance Manual (W.A.M.). (See Appendix at 55). The sections of the Manual referred to are those that set out the eligibility criteria for the State's General Assistance (GA) program[2].

Vermont's State plan has the effect of incorporating the ANFC-EA program into its GA program. The eligibility criteria for the two programs are identical. Families with children having an emergency need apply for assistance under the GA program and are granted or denied on the basis of the GA criteria. The Welfare Department then records and identifies those grants which are subject to federal financial participation. A claim is then made with the federal government for reimbursement of 50% of the State's ANFC-EA grants.

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[2]Authorized pursuant to 33 V.S.A. §3001, et seq., the GA program is the State-financed emergency assistance program.

During FY 74, the State of Vermont received $141,249 in federal matching funds for grants under ANFC-EA.

2. Plaintiff Donna Lynch

Donna Lynch lives in Burlington, Vermont, with her three year old son. She has been an ANFC recipient since March of 1973 and also receives disability benefits under the Supplemental Security Income (SSI) program. Her total income from these two welfare programs is approximately $305 per month. She has no other source of income.

In early February, 1975, Ms. Lynch received and cashed her regular ANFC check in the amount of $61.00 and her SSI check in the amount of $202.00. On February 3, 1975, the cash proceeds from these two checks (except for $30.00 which had already been spent) were stolen from her purse. The police were summoned and conducted an investigation but none of the stolen money was recovered.

Because of the theft, Ms. Lynch on February 5, 1975, applied for emergency assistance from Vermont's General Assistance program. She had neither applied for nor received assistance under this program during the twelve months immediately preceding February 5, 1975. Her immediate need was for money to pay for food, past due rent and past due utility charges for herself and her child. Her next regular ANFC check, in the amount of $42.00, was not due to arrive until February 16, 1975, and she had no source of money in the

meantime to meet her basic needs. Ms. Lynch's application was denied because her income during the thirty days immediately preceding the date of application exceeded the allowable level for her family. (See Vermont General Assistance Regulations in the Appendix at 55).

3. Plaintiff Gail Huntley

Gail Huntley lives in St. Albans, Vermont with her two year old child. Her sole source of income is an ANFC grant which pays her $159 on the first and $98 on the sixteenth of each month, for a total of $267 per month.

On April 1, 1975, Ms. Huntley moved into a new apartment because of a failure of the old apartment's water supply. She used all but $13 of the regular ANFC check she received on April 1, 1975, to pay part of the first month's rent on the new apartment, to purchase food and to take care of several other minor necessary expenses. She then was informed by the local electric utility that a $50 deposit was required before electric service would be provided to her new apartment.

On April 2, 1975, Ms. Huntley applied for emergency assistance from the General Assistance program to help pay the required deposit for electric service. She had no means with which to pay the deposit and her next regular ANFC check was not due until April 16, 1975. During the twelve months prior to April 2, 1975, she had received $17 in General Assistance which was subject to federal financial participation. Her

application was denied because her income from her ANFC checks exceeded the allowable level for her family.

4. Plaintiff Ruthann Bigelow

Ruthann Bigelow, a regular ANFC recipient, resides in Huntington, Vermont, with her two children, ages 2 and 6. On July 16, 1974, she received her mid-month ANFC check in the amount of $134. She immediately spent $34 from the proceeds of that check to pay gas, light and phone bills. Shortly thereafter, she spent the remaining $100 for a set of bunk beds for her children. These expenses left her without money for food and she therefore applied for emergency assistance. During the twelve months prior to July 22, 1974, she had received "in-kind" assistance for food under the General Assistance program with a total value of $5.76. This grant of $5.76 was claimed by Vermont for federal financial participation under the ANFC-EA program. Ms. Bigelow's application for emergency assistance on July 22, 1974, was denied because her income from her ANFC checks exceeded the allowable level for her family.

5. Plaintiff Leland Young

Leland Young lives in St. Johnsbury, Vermont, with his wife and three children under three years of age. He is a regular recipient of ANFC in the amount of $401 per month. On September 26, 1975, his refrigerator broke down beyond repair. Mr. Young did not have funds available at that time to purchase a replacement refrigerator, since he needed his

ANFC grants for on-going expenses and was unable to obtain a commercial loan.

Mr. Young applied for an emergency assistance grant for a refrigerator on September 30, 1975. His application was denied because his income from his ANFC checks exceeded the allowable monthly level for his family. Mr. Young appealed that denial to the Vermont Human Services Board. The Board affirmed the denial on October 27, 1975.

III. ARGUMENT

A. The District Court Was Without Jurisdiction To Rule on Plaintiffs' Statutory Claim.

The District Court in this case held that federal jurisdiction was properly based upon 28 U.S.C. §1343(3)[3]. Having so ruled, the Court then proceeded to dispose of the case by ruling on the plaintiffs' pendant statutory claim.

The plaintiffs' constitutional claim in this action is that Vermont's ANFC-EA regulations deny them the equal protection of the law. Specifically, the plaintiffs allege that Welfare Assistance Manual (W.A.M.) §2602 improperly differentiates between applicants who are equally destitute on the basis of the cause of destitution. Section 2602 (Appendix at 57) establishes exceptions to the income test generally used to determine eligibility for Vermont's General Assistance

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[3]This section permits federal courts to entertain suits to redress the deprivation, under color of state law, of constitutional rights.

program. (See §2600, Appendix at 55). The section provides for the granting of general assistance in "catastrophic situations," even though applicant's income exceeds the Department's eligibility standard. A "catastrophic situation" is defined as any one of the following:

1. Death of a spouse or minor dependent child
2. A court-ordered eviction
3. A natural disaster such as flood, fire, or hurricane
4. An emergency medical need.

It is well established that federal courts do not have jurisdiction under 28 U.S.C. §1343(3) unless the action raises substantial constitutional issues. If the claims are insubstantial or frivolous, the action must be dismissed. Hagans v. Lavine, 415 U.S. 528, 537 (1974). If, on the other hand, the claims are substantial, then the District Court has jurisdiction over both the constitutional claims and any pendant "statutory" claim. While a substantial constitutional claim can only be adjudicated by a three-judge court, a pendant statutory claim should be decided first by a single district judge. Only if the statutory claim is ultimately rejected must the three-judge court be convened. Id.

The classifications made by Vermont's ANFC-EA regulations do not deny plaintiffs equal protection of the laws. The case most often cited involving such equal protection claims

is Dandridge v. Williams, 397 U.S. 471 (1970). In that case, the Court, in upholding Maryland's maximum grant limitation which had been challenged as denying equal protection, said at 485:

> In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some "reasonable basis," it does not offend the constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequality." Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78. "The problems of government are practical ones and may justify, if they do not require, rough accomodations--illogical, it may be, and unscientific." Metropolis Theatre Co. v. City of Chicago, 228 U.S. 61, 69-70. "A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." McGowan v. Maryland, 336 U.S. 420, 426.

The policy reflected in W.A.M. §2602 meets the "reasonable basis" test. The Vermont Department of Social Welfare in promulgating the regulation has attempted to allocate its limited resources to provide assistance to those who have the greatest need (See Jefferson v. Hackney, 406 U.S. 535 (1972) for approval of practice of allocating limited funds to most needy): those adversely affected by the enumerated catastrophic situations. The effects of the catastrophies listed in W.A.M. §2602 tend to be great and costly. Moreover, a court-ordered eviction results in the loss of shelter.

Additionally, W.A.M. §2602 is designed to encourage careful management of applicants' homes and care for their

possessions. The catastrophic situations defined in the regulation are beyond the control of the applicants. However, applicants can take precautions to avoid most other losses, e.g. protecting property; placing money in the bank. An increase in careful management of possessions would result in a decrease in state and federal welfare costs, and at the same time enable the states to pay a greater proportion of the needs of those who are most needy.

Regulation §2602 also has the effect of minimizing the number of fraudulent claims by applicants. While it is difficult, if not impossible, to verify the theft or loss of money, it is relatively easy to verify a loss from a hurricane or fire, or a death in a family. The facility with which the situations listed in §2602 can be verified nearly eliminates the possibility of fraudulent claims.

The principles set forth in Dandridge v. Williams, supra, were applied in the emergency assistance context in Baxter v. Minter, 378 F. Supp. 1213 (D.Mass. 1974). In that case, the plaintiff challenged Massachusetts' emergency assistance regulation[4]. Massachusetts limited eligibility for emergency assistance to those persons who receive or could receive upon application, either ANFC (called AFDC in Massachusetts) or General Relief . The plaintiff alleged

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[4]Massachusetts had also opted to particpate in the federal program at issue here.

unconstitutional discrimination against that class of families who are needy but who are not receiving nor eligible for ANFC or General Relief. The Court found the constitutional claim insubstantial. In so doing, Judge Tauro stated:

> The question presents itself as to whether or not States have the same broad discretion in setting standards of need and levels of payment in their implementation of EA [as they do in AFDC].
>
> Given the latitude that States have in setting AFDC need and payment levels, and the similarity in purpose and scope of the EA and AFDC legislation, the court has no choice but to find that the State must be afforded the same latitude in setting EA need and payment standards.
>
> Dandridge, therefore, forecloses any serious equal protection claim when the court faces a statutory scheme as similar to AFDC as the present one. When a poverty line is drawn, someone is bound to be left out. While there may be legitimate disagreement as to where that line should be drawn, it cannot be said that the Commonwealth had no rational basis for utilizing the same standard of need that it already had adopted for the AFDC program. The Commonwealth made a public policy determination whose purpose was to ensure that available public assistance funds reached those with the greatest need.

The plaintiffs found support for their position in Burrel v. Norton, 381 F. Supp. 339 (D. Conn. 1974). In that case, the court held that Connecticut's emergency assistance regulations violated the rights of welfare applicants to equal protection. Connecticut limited emergency assistance to situations arising because of an eviction, or a natural disaster over which the recipient has no control. In striking down Connecticut's Emergency Assistance regulations, the Court held that they were both "under-inclusive" and "over-inclusive."

However, subsequent to the ruling in Burrel v. Norton, supra, the United States Supreme Court rejected the "under-inclusive - over-inclusive" analysis in cases involving "a non-contractual claim to receive funds from the public treasury ..." Weinberger v. Salfi, 95 S. Ct. 2457 (1975). The Court stated at 2472:

> Under those standards [as set forth in cases like Dandridge v. Williams], the question raised is not whether a statutory provision precisely filters out those, and only those, who are in the factual position which generated the congressional concern reflected in the statute. Such a rule would ban all prophylactic provisions, and would be directly contrary to our holding in Mourning, supra. Nor is the question whether the provision filters out a substantial part of the class which caused congressional concern, or whether it filters out more members of the class than nonmembers. The question is whether Congress, its concern having been reasonably aroused by the possibility of an abuse which it legitimately desired to avoid, could rationally have concluded both that a particular limitation or qualification would protect against its occurrence, and that the expense and other difficulties of individual determinations justified the inherent imprecision of a prophylactic rule. We conclude that the duration-of-relationship test meets this constitutional standard.

The foregoing demonstates the rational basis for W.A.M. §2602, and the need for a prophylactic rule[5].

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[5]The defendant is of the opinion that the cases of Mandley v. Trainor, 523 F. 2d 415 (7th Cir. 1975) and Williams v. Wohlgemuth, 400 F. Supp. 130 (E.D. Pa. 1975) (both cited by the plaintiffs) which adopt the kind of analysis used in Burrel v. Norton, supra, do not reflect the holding of Weinberger v. Salfi, supra.

B. The Action Should Be Dismissed With Respect To Plaintiffs Huntley and Bigelow Since Their Claims Fail To State A Claim Upon Which Relief Can Be Granted.

Plaintiffs Huntley and Bigelow assert the same challenge to Vermont's ANFC-EA program as the other plaintiffs. However, the factual basis to their claims differs somewhat. During the twelve months prior to their applications for emergency assistance, Plaintiffs Huntley and Bigelow had received emergency assistance which was subject to federal financial participation. (See paragraphs 21 and 26 of the Stipulation of Agreed Facts, Joint Appendix at 39 and 41.)

According to 42 U.S.C. §606(e), federal matching funds are available for emergency assistance which is furnished "for a period not in excess of 30 days in any 12-month period." The use of the word "period" indicates that Congress intended 30 consecutive days to be used in determining the amount of federal participation. The federal regulations promulgated by H.E.W. reflect an understanding of Congress' intent[6]. 45 C.F.R. §233.120 provides in subsection (b)(3) that "Federal matching is available only for emergency assistance which the State authorizes during one period of 30 consecutive days in any 12 consecutive months . . ." (emphasis added). Accordingly, even assuming that the

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[6]The interpretation of the agency charged with administering the program is entitled to great weight. New York Department of Social Services v. Dublino, 413 U.S. 405, 421 (1973).

other plaintiffs' claims are correct, plaintiffs Huntley and Bigelow would not have been eligible for ANFC-EA. They had already received assistance in the last 12 consecutive months prior to application and their requests for assistance were not made during the initial period of thirty consecutive days. For any assistance granted beyond that period, the state could not claim federal reimbursement.

The District Court recognized that "the status of Huntley and Bigelow in this case is questionable." (Opinion and Order, Joint Appendix at 73). However, the Court declined to dismiss the action as to them. The Court reasoned that there was no need to do so since the identical claims of plaintiffs Young and Lynch would be preserved and decided. This reasoning, however, overlooks the well-established principle that an action which fails to state a claim upon which relief can be granted, must be dismissed.

C. The Defendants' Motion For Summary Judgment Should Be Granted Since Vermont's Emergency Assistance Program Conforms to Federal Requirements.

The plaintiffs contend that Vermont's ANFC-EA regulations conflict with the provisions of the Social Security Act and are therefore invalid under the Supremacy Clause. The defendant, however, believes that federal law grants to the states great latitude in implementing an Emergency Assistance Program, and that the defendant has acted within the limits set by federal law.

Emergency assistance to needy families with children is defined in 42 U.S.C. §606(e)(1). That definition provides in pertinent part:

> (e)(1) The term "emergency assistance to needy families with children" means any of the following, furnished for a period not in excess of 30 days in any 12-month period, in the case of a needy child under the age 21 who is (or, within such period as may be specified by the Secretary, has been) living with any of the relatives specified in subsection (a)(1) in a place of residence maintained by one or more of such relatives as his or their own home, but only where such child is without available resources, the payments, care or services involved are necessary to avoid destitution of such child or to provide living arrangements in a home for such child, and such destitution or need for living arrangements did not arise because such child or relative refused without good cause to accept employment or training for employment--
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> (A) money payments, payments in kind, or such other payments as the State agency may specify with respect to, or medical care or any other type of remedial care recognized under State law on behalf of, such child or any other member of the household in which he is living, and
>
> (B) such services as may be specified by the Secretary; but only with respect to a State whose State plan approved under section 402 includes provision for such assistance.

Any state which participates in the emergency assistance program and which has an approved state plan is paid an amount equal to 50 per cent of the total amount expended as emergency assistance. (See 42 U.S.C. §603(a)(5)).

The above provisions concerning emergency assistance are implemented by H.E.W. regulation set forth at 45 C.F.R. §233.120 (See Joint Appendix at 53). Basically that regulation consists of two parts: section (a), which enumerates the

requirements for states plans; and section (b), which establishes the criteria for federal financial participation. Of special significance to this litigation is subsection (a)(1) which provides in part that a state plan must "Specify the eligibility conditions imposed for the receipt of emergency assistance."

Vermont has chosen to participate in the optional emergency assistance program, and has filed with H.E.W. a state plan which, as required, sets forth the eligibility conditions for the receipt of ANFC-EA[7]. The state plan, in specifying the eligibility criteria, incorporates by reference certain provisions of the state's General Assistance Program: "Eligibility conditions and methods of furnishing assistance are specified in the Family Services Policy Manual [now the Welfare Assistance Manual] (sections 2600 - 2603)." (See Joint Appendix at 55). To be eligible for EA under Vermont's program, an applicant must demonstrate that he has received during the 30 day period immediately prior to application net income which is below the applicable ANFC level. (W.A.M. §2600). However, this income standard will not be applied if the applicant can show either that his emergency needs were for medical care, or that his needs were caused by death, eviction or natural disaster (W.A.M. §2602)[8].

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[7] The plan which has been approved by H.E.W. is contained in the Joint Appendix at 51.

[8] At the time that the plaintiffs applied, Vermont's regulations also permitted an exception to the eligibility income test if the applicant was applying for the first time since September 5, 1973. (Joint Appendix at 18). However, while this action was pending, that exception was eliminated.

Plaintiffs assert that the 30 day income test of W.A.M. §2600 and the exceptions to it (W.A.M. §2602) impose eligibility standards which are more restrictive than those established by federal law. Citing King v. Smith, 392 U.S. 309 (1969), the plaintiffs contend that Vermont's EA program therefore is invalid under the Supremacy Clause. Specifically, the plaintiffs claim that Vermont, once having chosen to participate in the ANFC-EA program , must provide aid to those "needy" applicants who are "without available resources" and who need such aid "to avoid destitution" (phrases contained in 42 U.S.C. §606(e)(1)).

The defendant does not question the principles set out in King v. Smith, supra, nor claim the right to make Vermont's EA program more restrictive than is permitted by federal law. The defendant does however question the plaintiffs' interpretation of what 42 U.S.C. §606(e)(1) requires of participating states.

Although the plaintiffs allege that the Court must give a broad interpretation to the words, the Social Security Act does not make clear what constitutes "need"or "destitution." Baxter v. Minter, supra, at 1217. Moreover, the legislative history of 42 U.S.C. §606(e)(1) is of little assistance in determining the intent of Congress with respect to those terms. Baxter v. Minter, supra at 1217; Mandley v. Trainor, supra at 421. Since the terms are not defined, Congress must have left it up to the individual states to furnish definitions. This

is the position taken by H.E.W. in its regulations: "A state plan . . . must (1) Specify the eligibility conditions imposed for the receipt of emergency assistance." 45 C.F.R. §233.120 (a)(1).

The federal law does not set rigid eligibility requirements for the ANFC-EA program and it is clear that Congress contemplated state programs with varied levels and kinds of benefits. Both federal statute and regulations demonstrate that the states have wide latitude in determining the nature of their emergency assistance programs. Firstly, participation in the program is entirely optional. 42 U.S.C. §603(a)(5). Accordingly, the State of Vermont is free to terminate its participation in the ANFC-EA program at any time. Moreover, §606(e) specifically permits states to provide emergency assistance in the form of "money payments, payments in kind, or such other payments as the state agency may specify."[9] Similarly, pursuant to 45 C.F.R. §233.120, the states are free to:

1. specify the eligibility conditions (which may even be more liberal than those applicable to other parts of plan)
2. specify if migrant workers with families will be included and if so, in what parts of the state.

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[9] Cases like Rosado v. Wyman, 397 U.S. 397 (1970) establish that states can even limit money payments under ANFC by using a percentage reduction. Accordingly, Vermont, if it chose to, could further reduce the payments it does make through its ANFC-EA program.

3. specify the emergency needs that will be met

4. specify the types of services to be provided.

The adoption of Vermont's General Assistance regulations as the eligibility criteria for ANFC-EA does nothing more than to "specify the eligibility conditions"for ANFC-EA. Vermont's ANFC-EA program is not more restrictive than the federal law permits; rather it is consistent with the broad framework set out in the federal statute and regulations. Vermont, as the federal law allows, has chosen to define "destitute" applicants as those whose monthly income is less than the applicable ANFC level. It is that group of individuals who are the most needy. There can be no question that such individuals are "destitute" under any interpretation of the word "destitute." The only mandate of 42 U.S.C. §606(e) and 45 C.F.R. §233.120 is that federal financial participation will not be available unless the states make payments to destitute individuals. Vermont has done exactly what is required, i.e. granted benefits to individuals who are "destitute."

In setting the eligibility standard for emergency assistance lower than the ANFC level, Vermont has chosen a very low standard of need. However, the courts have consistently held that states are free to set standards of need in the ANFC program. See e.g., Shea v. Vialpando, 416 U.S. 251, 253 (1974); Jefferson v. Hackney, 406 U.S. 535, 541 (1972); and King v. Smith, supra at 318 (1968). It is the "standard of need" which

rendered ineligible each of the plaintiffs in this action. Were it not for the income test, each would have qualified for emergency assistance, no matter what the cause of their emergency need.

To compensate for the low standard of need used for the Emergency Assistance program, Vermont provides for exceptions to the income test in those situations set out in W.A.M. §2602. These exceptions were created to remove some of the rigidity from the regulations. The creation of the exception policy is consistent with the state's duty to define "destitution" for purposes of the ANFC-EA program. Again payments made to individuals under the exception policy are payments to "destitute" individuals.

The defendant's position is supported by Baxter v. Minter, supra[10]. The plaintiff in Baxter made virtually the same claim that is being made here: "The plaintiff contends that all persons eligible under broad federal [EA] requirements should be eligible for this relief." Baxter, supra, at 1215. Massachusetts contended, on the other hand, that the states could restrict emergency assistance eligibility criteria. It did so by limiting eligibility to those persons who were

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[10] The defendant does not agree with the reasoning of the United States District Court for the Eastern District of Pennsylvania in Williams v. Wohlgemuth, 400 F. Supp. 1309 (E.D. Pa. 1975). In that case, Pennsylvania denied emergency assistance to applicants whose needs were created by problems unrelated to civil disorders or natural disasters. Pennsylvania did not have an income standard like Vermont does. Even in finding that Pennsylvania's program was inconsistent with the federal statute, the court suggested that states do have some discretion in defining "destitution." Id, at 1320 n.12

receiving or could receive upon application either AFDC or state-funded General Relief. In other words, Massachusetts, like Vermont, imposed its own standard of need through an income test.

The Court, in Baxter, found no conflict between the federal act and Massachusetts' program. Judge Tauro said:

> As stated, EA is intended to provide aid to needy families with children, in order to avoid destitution. 42 U.S.C. §606(e). The terms "needy" and "destitution" were not defined by Congress and so no explicit statutory standard is available for guidance. A court can infer, therefore, that Congress used general terms in the statute when describing the poverty line of eligibility because it intended the States to supply their own precise standard of need. Such an inference is supported as well by other methods of statutory construction, including an analysis of relevant legislative history.

Baxter v. Minter, supra, at 1218.

After reviewing a portion of the legislative history, the Judge continued:

> The plaintiff argues that this language indicates a Congressional intent to establish a federal standard of need at least above the AFDC level. The court determines, however, that the legislative history reflects Congresssional intent that EA eligibility requirements be broader than those of AFDC, regardless of where a State sets its standard of need, implicitly preserving to the States discretion with respect to EA standards of need that King [v. Smith] recognized in the AFDC legislation. The view is shared by various legal writers who have considered the subject[11].

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[11] See also Boyd v. Department of Institutions and Agencies, 312 A 2d 79, 126 N.J. Super. 273 (1974), in which the court held that 42 U.S.C. §606(e)(1) does not attempt an exclusive definition of the term "emergency." In so holding, the court approved New Jersey's ANFC-EA program which provided assistance for emergencies of which the applicant had no advance notice.

IV. CONCLUSION

In creating the ANFC-EA program, Congress was obviously concerned with the problems of those needy families with children who need emergency assistance. However, such concern did not lead Congress to pass a bill which would assure that all such emergency needs would be met. Congress could have required all states participating in ANFC to participate in ANFC-EA. It did not; ANFC-EA is a completely optional component of the ANFC program. With all the discretion left to the states on how to administer an emergency assistance program, it is clear that Congress envisioned an ANFC-EA program which could, and in fact does, vary greatly from state to state. States are free to make of the program what they wish. A state's ANFC-EA program can be expansive and very liberal or it can be narrow and rather limited. The states may even choose not to have an ANFC-EA program. All the federal law requires is that any payments made through an ANFC-EA program be made to individuals who are destitute. Vermont's ANFC-EA although limited, does make payments to destitute individuals.

In view of the foregoing, the defendant respectfully urges the Court to 1) grant his motion to dismiss the action for lack of subject matter jurisdiction; or 2) grant his motion to dismiss with regard to plaintiffs Huntley and Bigelow and award summary judgment with regard to the claims of the

remaining plaintiffs; or 3) award summary judgment with regard to the claims of all plaintiffs.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served two copies of defendant-appellant's brief and one copy of the appendix on Stephen W. Kimbell, counsel for plaintiffs-appellees, by mailing same, first class postage prepaid, to his business address, Vermont Legal Aid, Inc., Box 562, Burlington, Vermont, on this 2nd day of September, 1976.

David Greenberg

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